Doubletree Guest Suites Santa Monica *and* Hotel Employees & Restaurant Employees Union Local 11, Hotel Employees & Restaurant Employees International Union.[1] Case 31-CA-26242

July 31, 2006

DECISION AND ORDER REMANDING

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

On September 19, 2003, Administrative Law Judge Jay R. Pollack issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs; the Respondent filed an answering brief; and the General Counsel and the Charging Party filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to remand this proceeding to the judge for further findings, analysis, and conclusions consistent with this Decision.

At issue here is whether the judge erred in finding that a settlement agreement in an earlier proceeding[2] bars the finding of the violation alleged in the instant complaint. For the reasons set forth below, we find that the settlement agreement must be set aside because there was no "meeting of the minds" between the Respondent and the General Counsel. Thus, solely with respect to certain allegations, explained below, in the earlier consolidated complaint, we will set aside the settlement in the earlier proceeding, reinstate those allegations, and remand those allegations together with those in the instant complaint to the judge for further consideration.

I. BACKGROUND

A. Cases 31–CA–25696 and 31–CA–25891

On November 25, 2002, the Regional Director issued a consolidated complaint alleging, inter alia, that around May of 2002 the Respondent promulgated in its employee handbook the following overly broad rule (which we will hereinafter call the "jewelry rule" or "jewelry policy"):

> Jewelry should be professional and conservative. The only pins or decorations that may be worn on uniforms are nametags, language pins, service awards, and other pins approved by Hotel management for special promotions or activities. **Union team members may wear one official union button to show union membership.** The maximum number of pins permitted beyond the nametag is two. Non-uniformed female team members may wear one conservative pin or broach. [Emphasis added.]

The complaint also alleged that about September 2002, the Respondent modified the jewelry rule by deleting the sentence providing that "[u]nion team members may wear one official union button to show union membership." The complaint alleged that the modified jewelry rule was overbroad in that it unlawfully restricted employees from wearing union buttons or insignia.

B. The Settlement Agreement

On January 28, 2003,[3] the Respondent participated in a settlement conference at the Region 31 office and signed an informal settlement agreement providing, among other things, for the posting of a notice by the Respondent and compliance with its terms. The agreement provided that the notice was to state, inter alia:

> WE WILL NOT promulgate, maintain, or enforce any rule or dress code provision that **discriminatorily** prohibits our employees from wearing union insignia or buttons, or that requires our approval before doing so. . . [emphasis added].
>
> WE WILL rescind and/or modify the rules and provisions of our Team Member handbook to conform to the foregoing undertakings AND WE WILL notify our employees that we have done so.

The Union did not participate in the settlement conference. Although the Union was informed that it could join in or object to the settlement agreement, it did neither. The agreement was approved by the Regional Director on February 7. By letter dated February 10, the Regional Director informed the Union that, in view of the settlement agreement, he had withdrawn the complaint and that any appeal of his decision was to be filed by the close of business February 24. No appeal was filed.

By letter to Region 31 dated March 4, the Respondent sought clarification regarding the required alterations to various provisions of its employee handbook, including the jewelry rule. In that letter the Respondent stated its understanding that the jewelry rule, "as previously revised [i.e., as revised in September 2002 to delete the sentence concerning "[u]nion team members"], complies

[1] We have amended the caption to reflect the disaffiliation of UNITE HERE from the AFL–CIO effective September 14, 2005.

[2] The consolidated complaint in the earlier proceeding included Cases 31–CA–25696 and 31–CA–25891.

[3] All dates hereafter are 2003 unless otherwise indicated.

with the Settlement Agreement. Hotel will not discriminatorily enforce this provision." By letter dated March 10, the Region stated to the Respondent that the settlement agreement "provides that the Employer will rescind and/or modify the rules and provisions of its Team Member handbook to conform to the Notice provisions and notify its employees that it has done so."

II. CASE 31–CA–26242

On June 30, the Region issued a complaint alleging that the Respondent, about February 6, "orally promulgated an ad hoc rule prohibiting employees from wearing union buttons and/or insignia" in violation of Section 8(a)(1). The complaint further alleged that about April 1, the Respondent repeated "the oral ad hoc rule cited above. . . . [The rule] is overbroad in that it unlawfully restricts employees from wearing union buttons and/or insignia."

At the hearing on the instant complaint, the General Counsel moved to amend the complaint to allege as violative of Section 8(a)(1) the "revised written rule" – that is, the jewelry rule as modified in September 2002. In so moving, the General Counsel stated: "It is the Region's decision that based on Respondent's admission they did not rescind their modified rule which we thought to be a violation." The amendment was granted.

At the hearing, the Respondent's attorney, Adam Abrahms, testified that, at the January 28 settlement conference, he had stated that the Respondent had special circumstances justifying its jewelry rule and had explained what those special circumstances were.[4] He also testified that at the settlement conference, he suggested that the proposed notice be amended to add the word "discriminatorily" because the initial jewelry rule allowed union-represented employees to wear a button and did not allow nonrepresented employees to wear a button.[5] The judge asked Abrahms whether there was any discussion about rescinding the jewelry rule, and Abrahms replied:

> [Y]es, to the extent that we made it clear that that was a sticking point for the Hotel, that it felt that it had a valid business need, and wanted to maintain that policy, and would not agree to settle without—without an acknowledgement that that policy was able to go forward, and that they could continue to enforce it as long as they enforced it non-discriminatorily, which is why the "discriminatorily" is added in there.

Abrahms was then asked, "Was that what was ultimately agreed to, by the parties?" He replied, "Yeah, after some discussion, that is what was brought back to us."

III. THE JUDGE'S DECISION

The judge found that the Regional Director approved the settlement agreement on March 10, and that "[o]n March 4, *prior to the Regional Director's approval of the settlement agreement*, the Respondent's attorney wrote [to the Region] that the Jewelry Policy was lawful and did not need to be modified or rescinded" (emphasis added).[6] The judge then found that,

> [n]otwithstanding this clear language, the Regional Director approved the settlement agreement. Thus, the General Counsel permitted the language of the Jewelry Policy to remain while other provisions of the employee handbook were modified or rescinded. There is no evidence that Respondent did not comply with the settlement agreement and the General Counsel did not seek to set aside the settlement agreement.

The judge observed that, under well-established law, a settlement agreement, complied with, bars litigation of *pre*-settlement conduct. The judge then cited, inter alia, *Ratliff Trucking Corp.*, 310 NLRB 1224 (1993), for the proposition that, under limited circumstances, a settlement agreement may also bar litigation of *post*-settlement conduct grounded in pre-settlement conduct that would itself be settlement-barred from litigation. Applying that principle here, the judge found that, because the Regional Director approved the settlement agreement *after* having received the March 4 letter stating the Respondent's belief that the jewelry rule complies with that agreement, the jewelry rule constitutes pre-settlement conduct that cannot be relied upon as evidence to support allegations of unlawful post-settlement maintenance and enforcement of the jewelry rule. Accordingly, the judge dismissed the complaint. The General Counsel and the Charging Party except.

[4] An employer may lawfully restrict employees from wearing union insignia during working time only if it demonstrates "special circumstances" justifying the prohibition. Special circumstances include circumstances in which the wearing of union insignia "may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established," or where a ban on union insignia is "necessary to maintain decorum and discipline among employees." *Smithfield Packing Co.*, 344 NLRB No. 1, slip op. at 5 fn. 20 (2004) (internal quotations omitted), enfd. sub nom. *Food Commercial Workers Union Local 204 v. NLRB*, Nos. 05–1004, –1131, –1229, 2006 WL 1192736 (D.C. Cir. May 5, 2006).

[5] The paragraph in the proposed notice had read:

> WE WILL NOT promulgate, maintain, or enforce any rule or dress code provision that prohibits our employees from wearing union insignia or buttons, or that requires our approval before doing so. . . .

[6] As noted earlier, and contrary to the judge's statement, the dates on the settlement agreement show that the Regional Director approved the agreement on February 7.

IV. ANALYSIS

We may quickly dispose of the judge's stated basis for dismissing the complaint. As noted above, the Regional Director approved the settlement agreement on February 7, not March 10. Thus, contrary to the judge's finding, when the Regional Director approved the settlement, he did not have before him the Respondent's March 4 letter setting forth its understanding of the agreement. Because the judge's settlement-bar finding rests on this factual error, that finding must be reversed, the instant complaint reinstated, and the case remanded to the judge. To do only that would, however, leave unresolved the larger issue of the viability of the settlement agreement itself, and thus of whether the allegations in the Consolidated Complaint in Cases 31–CA–25696 and –25891 pertaining to the jewelry rule should also be reinstated. We could include that issue within the scope of the remand and leave it for the judge to decide in the first instance. We are mindful, however, of the age of this case, and the parties' briefs have fully apprised us of the relevant arguments. Accordingly, we shall address that issue here.

As the Supreme Court has observed, the Board's policy from its earliest days has been to encourage voluntary settlement of labor disputes. *Wallace Corp. v. NLRB*, 323 U.S. 248, 253–254 (1944). We strongly reaffirm that policy here. Where, however, the parties' different understandings of the language of a settlement agreement warrant the conclusion that there was no meeting of the minds, the agreement must be set aside. *Howard Electrical & Mechanical*, 293 NLRB 472, 472 fn. 2, 490 (1989), enfd. mem. 931 F.2d 63 (10th Cir. 1991). That is the case here.

To begin with, the notice provision at issue is ambiguous, and neither of the interpretations advanced by the parties resolves the ambiguity. Again, the revised provision reads:

> WE WILL NOT promulgate, maintain, or enforce any rule or dress code provision that discriminatorily prohibits our employees from wearing union insignia or buttons, or that requires our approval before doing so.

The General Counsel and Charging Party contend that, in addition to precluding a "prior approval" rule, the revised provision unambiguously prohibits banning the wearing of union insignia or buttons. In the General Counsel's words, the provision simply means that employees "were free to wear Union buttons." That interpretation fails, however, to give any effect to the word "discriminatorily," which the Region agreed to add to a provision that already meant exactly what the General Counsel says the revised provision means. Thus, the General Counsel's and Charging Party's reading of the provision makes the word "discriminatorily" mere surplusage.

The Respondent, on the other hand, interprets the revised provision to permit it to maintain and enforce its jewelry rule as modified in September 2002, provided that it does not discriminate in the application of the rule by permitting only represented employees to wear a union button. This reading, too, fails to give effect to a portion of the notice provision, namely, the clause "or that requires our approval before doing so." For if the provision means that the Respondent *may* prohibit union buttons (provided it does so across the board), the prohibition of any prior approval requirement becomes meaningless.

Additionally, extrinsic evidence in the form of Abrahms' testimony does not resolve the provision's ambiguity.[7] With respect to his own statements at the settlement conference, Abrahms' testimony was reasonably specific; but regarding the discussion at that conference between himself and the Region's representatives, Abrahms testified in a vague, conclusory fashion. Thus, after Abrahms testified that he told the Region that the Respondent would not agree to settle "without an acknowledgement that that policy [the jewelry rule] was able to go forward, and that they [Respondent] could continue to enforce it as long as they enforced it nondiscriminatorily, which is why the 'discriminatorily' is added in there," the judge asked Abrahms, "Was that what was ultimately agreed to, by the parties?" and he replied, "Yeah, after some discussion, that is what was brought back to us." Abrahms' response to the judge's question—"after some discussion, that is what was brought back to us"—did not include any specific content of the parties' exchange after his proposal to add the word "discriminatorily" to the notice provision. Moreover, although it is uncertain what "that" refers to in "that is what was brought back to us," in context the most likely referent seems to be the modified notice provision itself. In other words, Abrahms' parol evidence purportedly offered to clarify that ambiguous provision appears to circle back to the ambiguous provision itself.

[7] The General Counsel and the Charging Party contend that the parol evidence rule should have barred receipt of Abrahms' testimony. We disagree. Under the parol evidence rule, evidence of prior or contemporaneous statements is inadmissible if offered for the purpose of varying or contradicting the terms of a contract. When a contract's meaning is ambiguous, however, parol evidence is admissible for the purpose of resolving that ambiguity. See, e.g., *Sansla, Inc.*, 323 NLRB 107, 109 (1997). Here, Abrahms' testimony was offered in order to ascertain the meaning of an ambiguous term in the settlement agreement, and not to vary its terms. Therefore, the parol evidence rule does not bar Abrahms' testimony.

Thus, we cannot conclude from his testimony that the Regional representatives' understanding of the revised provision was the same as Abrahms'.

Next, as explained above, the judge's finding of a settlement bar relied on his inadvertently mistaken belief that the Regional Director had received the Respondent's March 4 letter *before* approving the settlement agreement. Setting that mistake aside, however, some residual concern may linger from the fact that the Regional Director did not expressly reject the Respondent's March 4 assertion "that the Jewelry Policy was lawful and did not need to be modified or rescinded." We would not accord significance to the lack of a specific response. In a letter to the Respondent dated March 10, the Regional Director did not acquiesce in the Respondent's understanding of the notice provision regarding the jewelry policy. Instead, the Region's March 10 letter simply reiterated the relevant language of the settlement agreement, stating that it "provides that the Employer will rescind and/or modify the rules and provisions of its team member handbook to conform to the notice provisions and notify its employees that it has done so." The Regional Director reasonably could have decided that his nonacquiescence in the Respondent's interpretation would suffice to put the Respondent on notice that it ought not to rely on that interpretation.

Finally, as there can be many reasons why the Regional Director chose not to set the settlement agreement aside, we do not construe his failure to have done so as evidence that he agreed with the Respondent's understanding that the settlement agreement allowed the Respondent to retain the September 2002 jewelry policy.

Thus, as we have found that this is a case where no settlement agreement was reached—rather than a case where one was reached and further unfair labor practices committed—the situation here does not fall within the Board's principle (stated in cases such as *Ratliff Trucking*, cited by the judge),[8] that a settlement can have the effect of barring litigation of post-settlement conduct grounded in pre-settlement contract language or action.[9]

Accordingly, we reverse the judge's dismissal of the complaint in this case, set aside the settlement agreement in Cases 31–CA–25696 and 31–CA–25891 (but only to the extent that it pertains to the paragraphs in the Consolidated Complaint in those cases regarding the Respondent's jewelry policy), reinstate the paragraphs in the Consolidated Complaint in Cases 31–CA–25696 and 31–CA–25891 regarding the Respondent's jewelry policy, and remand this proceeding to the administrative law judge for further consideration of both the reinstated allegations and those in the instant complaint and to make the necessary findings, analysis, and conclusions of law.

ORDER

This proceeding is remanded to Administrative Law Judge Jay R. Pollack for further consideration. Accordingly, the judge's dismissal of the complaint in this case is reversed. The settlement agreement in Cases 31–CA–25696 and 31–CA–25891 is set aside only to the extent that it pertains to the allegations in the Consolidated Complaint in those cases regarding the Respondent's jewelry policy. The allegations in the Consolidated Complaint in Cases 31–CA–25696 and 31–CA–25891 pertaining to the Respondent's jewelry policy are reinstated. Further, the hearing shall be reopened to take evidence regarding the allegations in the Consolidated Complaint in Cases 31–CA–25696 and 31–CA–25891 pertaining to the Respondent's jewelry policy, including evidence regarding the Respondent's asserted defense of "special circumstances" in Cases 31–CA–25696 and 31–CA–25891, as well as in the present case.[10] Thereafter, pursuant to the applicable provisions of Section 102.45(a) of the Board's Rules and Regulations, the judge shall prepare and issue a supplemental decision containing findings of fact, conclusions of law, and a recommended supplemental Order, as appropriate on remand. Following service of this Supplemental Decision and Order on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. July 31, 2006

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Yaneth Palencia, Esq., for the General Counsel.
Mark Theodore, Esq. and *Adam C. Abrahms, Esq. (Proskauer Rose LLP)*, of Los Angeles, California, for the Respondent.
Kristin L. Martin, Esq. (Davis, Cowell & Bowe, LLP), of San Francisco, California, for the Union.

[8] 310 NLRB 1224 (1993).

[9] See *Stage Employees IATSE Local 659 (MPO-TV)*, 197 NLRB 1187, 1188 (1972), enfd. mem. 477 F.2d 450 (D.C. Cir. 1973).

[10] However, nothing in this Decision and Order shall preclude the parties from entering into a settlement agreement regarding any of the allegations at issue.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Los Angeles, California, on August 11, 2003. On April 22, 2003, Hotel Employees & Restaurant Employees Union Local 11, Hotel Employees and Restaurant Employees International Union, AFL–CIO (the Union) filed the charge in Case 31–CA–26242 alleging that Doubletree Guest Suites Santa Monica (Respondent or the Employer) committed certain violations of Section 8(a)(1) of the National Labor Relations Act, as amended (29 U.S.C. Section 151 et seq., herein called the Act). The Union filed an amended charge on June 27, 2003. On June 30, 2003, the Regional Director for Region 31 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent alleging that Respondent violated Section 8(a) (1) of the Act. The complaint was amended at the hearing. Respondent filed a timely answer to the complaint, denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,[1] and having considered the post-hearing briefs of the parties, I make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is engaged in the operation of a hotel located in Santa Monica, California. During the 12 months prior to the issuance of the complaint, Respondent derived gross revenues in excess of $500,000. During the same time period, Respondent purchased and received products valued in excess of $5,000 directly from suppliers located outside the State of California. Accordingly, Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Background and Issues

At its Santa Monica, California facility, Respondent is engaged in the operation of a hotel. The Union has been engaged in an organizing campaign at Respondent's hotel for approximately 2 years. In May 2002, the Union filed a charge in Case 31–CA–25696 alleging, inter alia, that Respondent maintained an overly broad no-solicitation rule and a rule requiring that employees remove union buttons. On September 27, 2002, the Regional Director issued a complaint against Respondent alleging various violations of the Act including an allegation that Respondent maintained an overly broad rule restricting employees from wearing union insignia and/or buttons; and the promulgation, maintenance, and enforcement of a written Jewelry Policy in Respondent's Employee Handbook.

On August 28, 2002, the Union filed the charge in Case 31–CA–25891, alleging, inter alia, that Respondent maintained various rules restricting employee Section 7 rights, including a ban against wearing union buttons. In September 2002, Respondent amended its Jewelry Policy. Thereafter, in October 2002, the Union filed an amended charge challenging Respondent's amended Jewelry Policy. On November 25, 2002, the Regional Director issued a consolidated complaint against Respondent alleging, inter alia, that Respondent promulgated and maintained an overly broad rule prohibiting employees from wearing union insignia and/or union buttons and that Respondent's Jewelry Policy unlawfully restricted employees' rights to wear union buttons and/or insignia.

On January 28, 2003, Respondent entered into an informal settlement agreement whereby it agreed, inter alia, to post a notice, which included the following:

> WE WILL NOT promulgate, maintain, or enforce any rule that discriminatorily prohibits our employees from wearing union insignia or buttons, or that requires our approval before doing so.
>
> WE WILL rescind and/or modify the rules and provisions of our Team Member handbook to conform to the foregoing undertakings AND WE WILL notify our employees that we have done so.

The Union did not join in the settlement agreement. While Respondent modified certain of its rules in the employee handbook it did not modify or rescind the Jewelry Policy at issue in the settled case and which is at issue in the instant case.

The Jewelry Policy attacked by the instant complaint was promulgated in September 2002 and has been enforced both before and after the Section 10(b) period involved in the instant case. The Jewelry Policy provides:

> Jewelry should be professional and conservative. The only pins or decorations that may be worn on uniforms are nametags, language pins, service awards, and other pins approved by hotel management for special promotions or activities. The maximum number of pins permitted beyond the nametag is two. Non-uniformed female team members may wear one conservative pin or broach.

Respondent contends that when it settled Cases 31–CA–25696 and 31–CA–25891 it agreed not to discriminatorily enforce its Jewelry Policy but did not agree to rescind or modify that rule. Respondent contends that the settlement agreement permits it to continue the rule in effect and to enforce the rule in a lawful manner. Respondent argues that the settlement agreement in Cases 31–CA–25696 and 31–CA–25891 bars the General Counsel from litigating the Jewelry Policy in the instant case.

General Counsel and Union argue that the Jewelry Policy is unlawful under *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). They further argue that the prior settlement agreement cannot be construed to abrogate the employees' rights to wear

[1] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

union buttons and/or insignia.

The facts are not in dispute. Respondent only allows its employees to wear pins and buttons approved by the Employer. The ban on union buttons applies to all of the employees at the Hotel. Employees at the Hotel wear three types of pins. Employees are required to wear a promotional white and blue button containing the phrase "Catch Me At My Best." Employees are also required to wear nametags and service recognition pins.

The Settlement Negotiations

As indicated earlier, on November 25, 2002, the Regional Director issued a consolidated complaint against Respondent alleging, inter alia, that Respondent promulgated and maintained an overly broad rule prohibiting employees from wearing union insignia and/or union buttons and that Respondent's Jewelry Policy unlawfully restricted employees' rights to wear union buttons and/or insignia. On January 28, 2003, representatives of the Respondent met with representatives of the Region to discuss settlement of the outstanding complaint. Respondent stated that it would not agree to language prohibiting the Employer from maintaining a no buttons rule or dress code. The Respondent did agree to the following language:

> WE WILL NOT promulgate, maintain, or enforce any rule that discriminatorily prohibits our employees from wearing union insignia or buttons, or that requires our approval before doing so.
>
> WE WILL rescind and/or modify the rules and provisions of our Team Member handbook to conform to the foregoing undertakings AND WE WILL notify our employees that we have done so.

On February 19, 2003, Respondent's general manager informed the press that Respondent was going to enforce its Jewelry Policy in a nondiscriminatory manner.[2] On March 4, 2003, Respondent's counsel wrote the Region stating that the Jewelry Rule "complied with the Settlement Agreement" and that "Respondent [would] not discriminatorily enforce the provision." Other employee rules were to be modified or deleted. The Union did not join in the settlement agreement. On March 10, the Regional director approved the settlement agreement unilaterally.

On April 3, 2003, the Union filed a charge alleging that Respondent had forbidden employees from wearing union insignia of the Act and the prior settlement. The charge was withdrawn by the Union. However, on April 22, 2003, the Union filed the instant charge alleging that Respondent had unlawfully forbidden employees from wearing union insignia. The Respondent then wrote the Region stating that Respondent was merely enforcing its Jewelry Rule in a nondiscriminatory manner. The Region found that the settlement agreement had not been breached but issued a complaint based upon an ad hoc oral rule prohibiting the wearing of union insignia. At the instant hearing, the General Counsel amended the complaint and challenged the written Jewelry Rule. The evidence, at the hearing, indicated that Respondent has enforced the Jewelry Rule as written since September 2002. Even at the hearing, when it became clear that Respondent had never rescinded or modified its Jewelry Rule, the Regional Director did not set aside or revoke the settlement agreement.

The Settlement Bar Issue

It is well established that "a settlement agreement with which the parties have complied bars subsequent litigation of pre-settlement conduct alleged to constitute unfair labor practices." *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978). Under Hollywood Roosevelt Hotel the settlement agreement disposes of all issues involving pre-settlement conduct. The settlement disposes of all pre-settlement matters "unless prior violations were unknown to the General Counsel, not readily discoverable by investigation, or specifically reserved from the settlement by the mutual understanding of the parties." 235 NLRB at 1397.

In Ratliff Trucking Corp., 310 NLRB 1224 (1993) the Board held that a settlement agreement barred the General Counsel from attacking language in a union-security clause which had been the subject of a settlement agreement. The Board held that the entire union-security clause of the collective-bargaining agreement was before the General Counsel in the cases disposed of by the settlement, and the language that the General Counsel alleged as unlawful even appeared in the same sentence as other language modified by the settlement agreement. The Board reasoned that the respondents could therefore reasonably believe that the settlement disposed of the legality of the entire clause, at least during the term of the contract in which it was contained. According to the Board, in order for the General Counsel to relitigate, the union-security clause and call it a new, or "other" case, the General Counsel had to show a specific reservation of the right to proceed on "the union-security clause's unaltered provisions." Thus, the Board held that the unfair labor practices alleged in *Ratliff Trucking*, could not be properly described as constituting either an "other" case or one involving different pre-settlement "events." The settlement, therefore, had the effect of barring litigation of not only pre-settlement conduct but also barring litigation of post-settlement conduct which was grounded in the pre-settlement contract language.

In *Leeward Nursing Home*, 278 NLRB 1058, 1083 (1986) the Administrative Law Judge noted with Board approval:

> Finally, it deserves mention that a settlement agreement may, in a limited class of circumstances, have a certain "prospective" reach in that it will bar efforts to litigate alleged post settlement violations which are themselves inescapably grounded in pre-settlement actions which would be barred by a settlement from litigation. *Ventura Coastal, Corp.*, 264 NLRB at 298, 301 (1983).

Thus, in the cited case, the settlement was held to bar not only litigation of a certain pre-settlement demotion of the charging party, but also the post settlement layoff of the same individual. The latter layoff action, it was held, was a natural consequence of the former settlement-barred demotion since the demotion placed the alleged discriminatee in a position of vulnerability to layoff at such future point as the

[2] The parties stipulated that the Union was aware of this statement by the Hotel's general manager.

employer might be required to engage in work force cutbacks. Since the eventual layoff of the alleged discriminatee had no independently unlawful character, but depended for its violative character solely on the allegedly unlawful presettlement demotion, the settlement was held to bar litigation of both the initial demotion and the eventual post settlement layoff. Ibid.

I find the instant case controlled by the holding in *Ratliff Trucking*. In January 2003, at the time of the settlement agreement, the Regional Director, had before him the Jewelry Policy in existence since September 2002. Apparently, the General Counsel contends that the policy was to be rescinded or modified. However, the uncontradicted evidence establishes that Respondent never agreed to modify the Jewelry Policy. On March 4, prior to the Regional Director's approval of the settlement agreement, Respondent's attorney wrote that the Jewelry Policy was lawful and did not need to be modified or rescinded. Notwithstanding this clear language, the Regional Director approved the settlement agreement. Thus, the General Counsel permitted the language of the Jewelry Policy to remain while other provisions of the employee handbook were modified or rescinded. There is no evidence that Respondent did not comply with the settlement agreement and the general Counsel did not seek to set aside the settlement agreement. Thus, under *Hollywood Roosevelt Hotel*, and *Ratliff Trucking*, I find that the instant complaint must be dismissed. The Jewelry Policy, on which the unfair labor practices alleged in the complaint rests, is pre-settlement conduct, which may not be considered as evidence to support the General Counsel's complaint. Accordingly, I shall recommend dismissal of the complaint.

CONCLUSIONS OF LAW

1. Doubletree Guest Suites Santa Monica is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Hotel Employees & Restaurant Employees Local 11 and Hotel Employees and Restaurant Employees International Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The instant complaint is barred by the Board's settlement bar doctrine.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:

ORDER[3]

The complaint is dismissed in its entirety.

Dated September 19, 2003.

[3] All motions inconsistent with this recommended order are hereby denied. If no exceptions are filed as provided by Section l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.